



PACIFICORP
LEGAL DEPARTMENT

MICHAEL G. JENKINS
Assistant General Counsel
801-220-2233
801-220-3299 (fax)
michael.jenkins@pacifiocorp.com

One Utah Center, 201 South Main, Suite 2200, Salt Lake City, Utah 84111

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March 29, 2004

**PUBLIC
DOCUMENT**

Via Federal Express

Matthew D. Cohn
U.S. Environmental Protection Agency
Region VIII, 8ENF-L
999 18th Street, Suite 300
Denver, CO 80202-2466

Re: Vermiculite Intermountain Site, Salt Lake City, Utah

Dear Matt:

This follows up the voice message I left for you last Friday afternoon.

As you know, PacifiCorp has devoted a substantial amount of time and resources over the last two weeks investigating the property ownership and operational history of the Vermiculite Intermountain Site located on the block bounded by First and Second South and Third and Fourth West in Salt Lake City (the "Site"). Based on this investigation, PacifiCorp has prepared a detailed and comprehensive Site History. Two copies are enclosed for your review and consideration. We remain willing, of course, to incorporate any added information that EPA has not already provided to us or any other information that becomes available.

I have also enclosed a revised version of the Administrative Order on Consent ("AOC"), including a clean copy and a redline against the draft you

provided to us dated March 10, 2004. I have also sent you an electronic copy of this cover letter and the AOC via email (clean WordPerfect format and also a redlined version in a PDF format). Unfortunately, because of the problems we had using the electronic AOC file that you sent to me by e-mail, we were not able to produce an electronic redline file in WordPerfect format.

As you will see from our revisions to the AOC, PacifiCorp is committed to assume responsibility for and to perform an appropriate and timely removal action with respect to the substation property it currently owns within the Site. PacifiCorp is willing to complete negotiations regarding the AOC in order to complete that work as soon as possible. We anticipate that this work would be performed under two separate Work Plans, with one addressing the interior cleanup of the control house building and the other addressing any required exterior soil excavation and disposal. As I am sure you can appreciate from the dangers associated with an energized, high-voltage substation, a number of important access and physical safety considerations will need to be taken into account with respect to any work in and around the substation itself. In any event, the company is committed to moving forward on this project as quickly as possible.

While PacifiCorp is willing to assume responsibility for its own property, the company is not in a position to accept EPA's request to assume investigation and response action responsibilities for areas outside of the substation. PacifiCorp takes this position for a number of reasons based on the information now available to us. As I mentioned to you in my voice message, we remain willing to consider any additional information that EPA may have in regards to PacifiCorp's connection to those areas outside of our substation.

For instance, as you will see in the Site History, we are not aware of any evidence showing that any of the contamination that may be present outside of PacifiCorp's substation property is fairly attributable to PacifiCorp's past or current ownership of a portion of the Site. The enclosed report clearly shows that the exfoliation facility that caused the contamination was not constructed until after PacifiCorp sold the property in 1954 and that the facility was closed in 1984, the same year that the company re-acquired the property. Based on the unique facts and circumstances relating to this Site, we believe that PacifiCorp has a sound basis to obtain apportionment of any joint and several liability claims EPA may assert. In addition, PacifiCorp is concerned that any response costs it may incur with respect to work on other properties, even under an AOC, may not be recoverable from other PRPs based on the position EPA has recently taken before the U.S. Supreme Court in the appeal involving Aviall Services, Inc. v. Cooper Industries, Inc., 312 F.3d 677 (5th Cir. 2002).

We would appreciate having an opportunity to discuss these issues with you more fully, preferably in a meeting. It may also make sense to have the

Matt Cohn
March 29, 2004
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technical people meet at the same time in order to facilitate negotiations of the AOC and the removal action project. Please feel free to contact me to follow up.

Very truly yours,

A handwritten signature in black ink, appearing to read 'MJ' or 'Mj', with a stylized, cursive-like flow.

Michael G. Jenkins

cc: Dave Wilson
Jeff Tucker

Document comparison done by DeltaView on Monday, March 29, 2004 14:42:56

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DRAFT March 29, 2004

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:
Vermiculite Intermountain Site
Salt Lake City, Utah

PacifiCorp, d/b/a Utah Power & Light
Respondent

ADMINISTRATIVE ORDER ON CONSENT
FOR REMOVAL ACTION

U.S. EPA Region 8
CERCLA Docket No.

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive Environmental
Response, Compensation, and Liability Act, as
amended, 42 U.S.C. §§ 9604, 9606(a), 9607
and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and PacifiCorp, d/b/a Utah Power & Light ("Respondent"). This Order provides for the performance of a removal action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the property located generally at 400 West 100 South in Salt Lake City, Utah, the "Vermiculite Intermountain Site" or the "Site." PacifiCorp is the current owner of a portion of the Site, defined below as the "PacifiCorp Property."

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"), and delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C and 14-14-D: Cost Recovery, and to the Director, Superfund Preparedness, Assessment, and Emergency Response Program of the Office of Ecosystems Protection and Remediation, EPA Region VIII office.

3. EPA has notified the State of Utah (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Order has been negotiated in good faith and EPA further recognizes Respondent's cooperation and initiative in connection with the Site, the PacifiCorp Property, and the matters addressed in this Order. EPA and Respondent further agree that Respondent's participation in this Order and any actions undertaken by Respondent in accordance with this Order, do not constitute an admission of liability or agreement with EPA's findings of fact or determinations of law contained in this Order, except as may be necessary in a proceeding to enforce the terms of this Order. Respondent does not admit, and retains the right to controvert in any subsequent proceeding (except for proceedings to enforce this Order), the validity of the findings of fact, conclusions of law, and determinations set forth in this Order.

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA and upon Respondent and its successors and assigns and Respondent is responsible for carrying out all activities required by this Order. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on _____, by the Director of the Office of Preparedness, Assessment and Emergency Response, EPA Region 8, or his delegate, and all attachments thereto. The Action Memorandum is attached as Appendix A and incorporated herein by reference.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

c. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Order as provided in Section XXXII.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "Future Response Costs" shall mean any and all costs, including, but not limited to, direct and indirect costs, that the United States incurs with respect to the Site on or after the Effective Date of this Order, but excluding those Future Response Costs that qualify as Oversight Costs, as provided below.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. "Order" shall mean this Administrative Order on Consent and all appendices attached hereto (listed in Section XXXI). In the event of conflict between this Order and any appendix, this Order shall control.

j. "Oversight Costs" shall mean all costs relating to the PacifiCorp Property, including direct costs and indirect costs and accrued Interest, incurred by the United States from September 1, 2003 until the date that EPA issues a Notice of Completion of Work as provided in Paragraph 69, that the United States may incur in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing,

or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and any costs incurred pursuant to Paragraph 30 (emergency response) after the Effective Date of this Order.

k. "PacifiCorp Property" shall mean the real property located at 147 South 400 West in Salt Lake City, Salt Lake County, Utah, and described more fully in Appendix B attached hereto and incorporated herein.

l. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

m. "Parties" shall mean EPA and Respondent.

n. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the PacifiCorp Property through August 31, 2003, plus Interest on all such costs through such date.

o. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq. (also known as the Resource Conservation and Recovery Act).

p. "Respondent" shall mean PacifiCorp, d/b/a Utah Power & Light.

q. "Section" shall mean a portion of this Order identified by a Roman numeral.

r. "Site" shall mean the Vermiculite Intermountain Superfund Site, located generally at 400 West 100 South in Salt Lake City, Utah and depicted generally on the map in the Action Memorandum, which is attached as Appendix C. The Site, but is not limited to, includes the PacifiCorp Property.

s. "State" shall mean the State of Utah.

t. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

u. "Work" shall mean all activities relating to the PacifiCorp Property Respondent is required to perform under this Order.

v. "Work Plans" shall mean the Phase I Work Plan (relating to response activities within the control building located on the PacifiCorp Property), and the Phase II Work Plan (relating to removal of soils within the PacifiCorp Property), as set forth in Appendix D and Appendix E, respectively, to this Order, and any modifications made thereto in accordance with this Order.

IV. EPA FINDINGS OF FACT

8. EPA hereby makes the following findings of fact for purposes of this Order:

a. The Site includes the location of the former Vermiculite Intermountain exfoliation facility (the "facility") and areas contaminated by asbestos emissions therefrom.

b. The facility, which operated between the early 1940s and 1984, exfoliated vermiculite concentrate from 1954 to 1984 from the Libby Vermiculite Mine, located in Libby, Montana. The Libby vermiculite concentrate contained amphibole asbestos, frequently above trace levels. EPA records show that the facility received at least 25,000 tons of vermiculite concentrate from the Libby Mine.

c. Historical records from the Libby Mine and data collected during investigations at the Libby Mine show that the handling and processing of Libby vermiculite during the exfoliation process were conducted at the Site.

d. From approximately 1911 to 1954, Respondent owned a portion of what is now the PacifiCorp Property (the "1911-1954 Property"). In 1941, the Utah Lumber Company constructed a new warehouse on a portion of the 1911-1954 Property. This warehouse was occupied by Intermountain Insulation Company and may have operated as a distribution facility. In 1954, Respondent sold the 1911-1954 Property to the Utah Lumber Company after which Vermiculite Intermountain constructed a new vermiculite exfoliation facility. Vermiculite Intermountain operated the exfoliation facility from about 1954 until about 1976 when it moved its operations back to the warehouse which was constructed in 1941 and continued operations there until 1984. During this time, emissions containing amphibole asbestos left the facility and contaminated surrounding properties, which are now part of the Site. In 1984, Respondent re-acquired the 1911-1954 Property from the then property owner (the Van Cott Bagley, Cornwall and McCarthy Profit Sharing Trust), including some additional property, that now constitutes the PacifiCorp Property.

e. EPA's sampling at the Site has detected amphibole asbestos in soils, as well as in dust found in several buildings on the Site. A summary of the data reflecting these findings can be found in the Action Memorandum. As described more fully in the Action Memorandum, EPA has determined that certain response actions are necessary within the control building, as well as surrounding soils, at the PacifiCorp Property.

V. EPA CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, is a "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The conditions described in Section IV above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

10. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within thirty (30) days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least five (5) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within forty-five (45) days of EPA's disapproval.

11. Respondent hereby designates David Wilson of PacifiCorp as its Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order. Respondent's address is as follows:

David Wilson, P.E.
Safety & Environmental Dept.
PacifiCorp Power Delivery
825 NE Multnomah, Suite 1700 LCT
Portland OR 97232
Desk (503) 813-6635
Fax (503) 813-5088

To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

12. EPA has designated Floyd Nichols of the Office of Preparedness, Assessment and Emergency Response, Region 8, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the OSC at U.S. EPA, EPR-ER, 999 18th Street, Suite 300, Denver, CO 80202. Delivery, except in emergency circumstances, shall be by U.S. mail.

13. EPA and Respondent shall have the right to change its respective designated OSC or Project Coordinator. Respondent shall notify EPA three (3) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice. EPA retains the right to disapprove of any new Project Coordinator designated by Respondent.

VIII. WORK TO BE PERFORMED

14. Work Plans. Respondent shall perform, at a minimum, all actions necessary to implement the Work as set forth in the Work Plans, which EPA hereby approves. The Work Plans, including their attachments, are hereby incorporated into and is enforceable under this Order. Respondent shall not commence any Work except in conformance with the terms of this Order and the approved Work Plans.

15. Health and Safety Plan. Within thirty (30) days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. Respondent may use a single Health and Safety Plan to address the Work described in both Work Plans. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

16. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National

Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than three (3) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

17. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for any necessary post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

18. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every tenth day after the date of receipt of EPA's approval of the Work Plans until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit three (3) copies of all plans, reports or other submissions required by this Order or the Work Plans. Upon request by EPA, Respondent shall submit such documents in electronic form.

c. Respondent shall, at least (thirty) 30 days prior to the conveyance of any interest in the PacifiCorp Property, give written notice to the transferee that the property is subject to this Order and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

19. Final Report. Within forty-five (45) days after completion of all Work required by this Order, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with

the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

20. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

- i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
- ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 21(a) and 21(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, as applicable. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site

facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

21. Respondent shall, commencing on the Effective Date, provide EPA ,the State, and their representatives, including contractors, with access to the PacifiCorp Property, for the purpose of conducting any activity related to this Order, as follows:

a. EPA recognizes that the PacifiCorp Property includes an active, operating electrical substation that is an integral part of PacifiCorp's operations. EPA further recognizes that a number of critical health and safety policies, rules, regulations, and restrictions apply to the PacifiCorp Property in regards to the dangerous nature of electrical substation operations and for reasons entirely unrelated to any environmental conditions that may be present.

b. In the event EPA, the State, and any of their representatives, including contractors seek to have access to the PacifiCorp Property for any reason, they shall provide PacifiCorp with reasonable advance notice. In no event will EPA, the State, or any of their representatives, including contractors, be permitted to enter the PacifiCorp Property without:

- i. completing PacifiCorp's Substation Awareness Training,
- ii. wearing proper personal protective equipment (PPE), as described in PacifiCorp's Substation Entry Guidelines and PacifiCorp's Safety Orders, and
- iii. one or more PacifiCorp substation journeyman being present.

c. EPA agrees to comply with all applicable health and safety policies, rules, regulations, restrictions that apply to the PacifiCorp Property, whether founded upon federal, state, or local laws, rules, or regulations or upon Respondent's policies and procedures ("PacifiCorp Substation Entry Guidelines and/or PacifiCorp Safety Orders"). EPA further agrees to indemnify, defend, and hold Respondent harmless from and against any and all claims arising from or relating to any breach or violation of any PacifiCorp Substation Entry Guidelines and/or PacifiCorp Safety Orders by EPA, the State, and any of their representatives, including contractors. The applicable parts of the Substation Entry Guidelines and Safety Orders will be presented during the Awareness Training.

22. If Respondent is required to implement institutional controls within the PacifiCorp Property, Respondent shall execute and record in the Recorder's Office of Salt Lake County, State of Utah , an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Order, subject to the limitations set forth in Paragraph 21, and (ii) grants the right to enforce the land use restrictions described in the Work Plans, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the response measures to be performed pursuant to this Order. Respondent shall, within ninety (90) days of the time that EPA determines that Respondent will be required to implement such institutional controls, submit to EPA for review and approval with respect to such property:

a. A draft easement that is enforceable under the laws of the State of Utah ,
and

b. A current title insurance commitment or some other evidence of title reasonably acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances). Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder's Office of Salt Lake County. Within thirty (30) days of recording the easement, Respondent shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

23. Notwithstanding any provision of this Order, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

24. Respondent shall provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site that pertain to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

25. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

26. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with

the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a brief description of the type of communication constituting the document, record, or information; and 6) a description of the nature of the privilege asserted by Respondent.

27. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

28. Until five (5) years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall preserve and retain non-identical copies of relevant records and documents now in its possession or control or which come into its possession or control that relate to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until five (5) years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

XII. COMPLIANCE WITH OTHER LAWS

29. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

30. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the PacifiCorp Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer **[insert Regional Office, e.g., Emergency Planning and Response Branch, EPA Region, telephone number, and the EPA Regional Emergency 24-hour telephone number]** of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of

the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

XIV. AUTHORITY OF ON-SCENE COORDINATOR

31. The OSC shall be responsible for overseeing Respondent's implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

32. Payments for Oversight Costs.

a. Respondent shall pay EPA all Oversight Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a Regionally prepared cost summary (currently known as a SCOPRIOS Summary) which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 33 of this Order.

b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 08-GA. In the alternative, Respondent may make such payments by wire transfer directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS/NYC/CTR/
BNF=/AC-68011008

c. At the time of payment, Respondent shall send notice that payment has been made to:

Director, Financial Management Program, TMS-F
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202

and

Cost Recovery Program Manager, ENF-RC
Superfund Enforcement Program
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202

d. The total amount to be paid by Respondent pursuant to Paragraph 32(a) shall be deposited in the Vermiculite Insulation Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

33. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for Oversight Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue 30 days after the Effective Date and shall continue to accrue until the date of payment. The Interest on Oversight Costs shall begin to accrue 30 days after the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

34. Respondent may dispute all or part of a bill for Oversight Costs submitted under this Order, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 32 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 32(c) above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within fifteen (15) days after the dispute is resolved. Notification of disputes regarding all or part of a bill for Future Response Costs shall be sent to:

Cost Recovery Program Manager
EPA Region 8, ENF-T
999 18th Street, Suite 300
Denver, CO 80202

Respondent shall notify EPA's Cost Recovery Program Manager in writing of its objections within fifteen (15) days of receipt of the bill that it is disputing all or part of the bill for Oversight Costs. The Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and be sent certified U.S. mail, return receipt requested or by other mail delivery service with a delivery tracking and verification system. Thereafter, the provisions of Section XVI (Dispute Resolution) shall apply to the dispute.

XVI. DISPUTE RESOLUTION

35. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order

expeditiously and informally. Any disputes concerning activities or deliverables required under this Order for which dispute resolution has been expressly provided for, shall be resolved as provided in this Section.

36. If Respondent objects to any EPA action taken pursuant to this Order, including billings for Oversight Costs, it may notify EPA in writing of its objection(s) within fifteen (15) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall then have thirty (30) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order.

37. If an agreement is not reached during the Negotiation Period, the Respondent may request a written determination by the Director, Superfund Preparedness, Assessment, and Emergency Response Program of the Office of Ecosystems Protection and Remediation, EPA Region VII office. The Director's determination is EPA's final decision, which may be challenged in the United States District Court for the District of Utah to the extent permitted by law. EPA's decision shall be incorporated into and become an enforceable part of this Order. Except as otherwise provided herein, Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

38. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the reasonable control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work or increased cost of performance.

39. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within three (3) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

40. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Order that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

XVIII. STIPULATED PENALTIES

41. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 47 and 48 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Order or any Work Plans or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order or the Work Plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

42. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with terms of this Order or the Work Plans, but specifically excluding delinquency in the provision of progress reports:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1000	31st through 45th day
\$2000	46th day and beyond

43. Stipulated Penalty Amounts - Progress Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate progress reports pursuant to this Order:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$250	15th through 30th day
\$500	31st through 45th day
\$1,000	46th day and beyond

44. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a submission under Section VIII (Work to be Performed) that

EPA determines to be deficient, during the period, if any, beginning on the day after EPA's receipt of such submission until thirty (30) days after the date upon which EPA notifies Respondent of such deficiency; and 2) with respect to a decision by the EPA Management Official at the office director level or higher, under Paragraph 37 of Section XVI. (Dispute Resolution), during the period, if any, beginning on the day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

45. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

46. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by wire transfer sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS/NYC/CTR/
BNF=/AC-68011008

and shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 08-GA, the EPA Docket Number _____, and the name and address of Respondent. Copies of wire transfer paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 12, and to Kelcey Land, Cost Recovery Manager, ENF-RC, 999 18th Street, Suite 300, Denver, CO.

47. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.

48. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 46. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order. Notwithstanding any other provision of this Section, EPA may, in its

unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIX. COVENANT NOT TO SUE BY EPA

49. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), arising from or related to the performance of the Work or to Past Response Costs, Oversight Costs, or Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XV of this Order and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Order. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order, including, but not limited to, payment of Oversight Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

50. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

51. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. liability for costs not included within the definitions of Past Response Costs, Oversight Costs, or Future Response Costs;
- c. criminal liability;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

f. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the PacifiCorp Property.

XXI. COVENANT NOT TO SUE BY RESPONDENT

52. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Oversight Costs, Future Response Costs, or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the PacifiCorp Property.

53. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 51 (b) and (d) through (f), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

54. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

55. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the PacifiCorp Property, including for contribution, against any person that has entered into a final de minimis settlement under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), with EPA with respect to the PacifiCorp Property as of the Effective Date. This waiver shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts a claim or cause of action relating to the PacifiCorp Property against such Respondent.

XXII. OTHER CLAIMS

56. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

57. Except as expressly provided in Section XXI, Paragraph 57 (De Minimis Waivers) and Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

58. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h) or otherwise permitted by law.

XXIII. CONTRIBUTION PROTECTION

59. The Parties agree that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are all response costs incurred or to be incurred by the United States or any other authorized person, and any and all response actions taken or to be taken at the Site, except that "matters addressed" specifically excludes EPA's rights set forth in Section XX (Reservations of Rights by EPA). Except as provided in Paragraph 57 of this Order (De Minimis Waivers), nothing in this Order precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

60. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

61. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

XXV. INSURANCE

62. At least seven (7) days prior to commencing any on-Site work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive

general liability insurance and automobile insurance with limits of one million dollars, combined single limit. Respondent may satisfy its obligations under this Paragraph by providing such insurance through one or more contractors. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

63. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security in the amount of \$500,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Respondent; or
- e. A demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

64. If Respondent seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 63(a) of this Section, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondent seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 63(d) or (e) of this Section, it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) as requested by EPA. In the event that EPA reasonably determines at any time that the form of financial assurances provided pursuant to this Section does not satisfy the requirements of the applicable laws, rules, or regulations, Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 63 of this Section. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

65. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 72 of this

Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondent may reduce the amount of the security in accordance with the written decision resolving the dispute.

66. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

67. Any requirements of the Order may be modified in writing by mutual agreement of the parties. Modifications to the EPA-approved Work Plans may only be granted in writing by the EPA OSC. Modifications to any plan or schedule other than the approved Work Plans may be made in writing by the OSC or at the OSC's oral direction, provided that the oral modification is memorialized in writing within ten (10) days. If the OSC makes an oral modification at Respondent's request, it shall be memorialized in writing by the Respondent within ten (10) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to this Paragraph.

68. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXVIII. NOTICE OF COMPLETION OF WORK

69. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plans if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plans and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plans shall be a violation of this Order.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

70. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order,

Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

71. This Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order.

XXX. EFFECTIVE DATE

72. This Order shall be effective ten (10) days after the Order is signed by EPA.

The undersigned representative(s) of Respondent certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Order and to bind the party(ies) it (they) represent(s) to this document.

Agreed this _____ day of March, 2004 .

For Respondent _____

By _____
Title _____

It is so ORDERED and Agreed this _____ day of March, 2004.

BY: _____ DATE: _____
Doug Skie, Director
Preparedness, Assessment and
Emergency Response Branch
Region 8
U.S. Environmental Protection Agency

BY: _____ DATE: _____
Michael Risner, Director
Legal Enforcement Program
Region 8
U.S. Environmental Protection Agency

BY: _____ DATE: _____
Sharon Kercher, Director
Technical Enforcement Program
Region 8
U.S. Environmental Protection Agency

EFFECTIVE DATE: _____

DRAFT March 23,~~26~~, 2004

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:
Vermiculite Intermountain Site
Salt Lake City, Utah

PacifiCorp, d/b/a Utah Power & Light
Respondent

**ADMINISTRATIVE ORDER ON CONSENT
FOR REMOVAL ACTION**

U.S. EPA Region 8
CERCLA Docket No.

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive Environmental
Response, Compensation, and Liability Act, as
amended, 42 U.S.C. §§ 9604, 9606(a), 9607
and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and PacifiCorp, d/b/a Utah Power & Light ("Respondent"). This Order provides for the performance of a removal action by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the property located generally at 333400 West 100 South in Salt Lake City, Utah, the "Vermiculite Intermountain Site" or the "Site." PacifiCorp is the current owner of a portion of the Site, defined below as the "PacifiCorp Property." not
ref

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"), and delegated to the Administrator of the EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C and 14-14-D: Cost Recovery, and to the Director, Superfund Preparedness, Assessment, and Emergency Response Program of the Office of Ecosystems Protection and Remediation, EPA Region VIII office. no

3. EPA has notified the State of Utah (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Order has been negotiated in good faith and that the EPA further recognizes Respondent's cooperation and initiative in connection with the Site, the PacifiCorp Property, and the matters addressed in this Order. EPA and Respondent further agree that Respondent's participation in this Order and any actions undertaken by Respondent in accordance with this Order, do not constitute an admission of any liability or agreement with EPA's findings of fact or determinations of law contained in this Order, except as may be necessary in a proceeding to enforce the terms of this Order. w/mod

~~Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than a proceeding (except for proceedings to implement or enforce this Order), the validity of the findings of fact, conclusions of law, and determinations set forth in Sections IV and V of this Order. Respondent agrees to comply with and be bound by the terms of this Order and further agree that it will not contest the basis or validity of this Order or its terms.~~ no

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA and upon Respondent and its successors and assigns and Respondent is responsible for carrying out all activities required by this Order. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order. w/mod

~~6. Respondent is liable for carrying out all activities required by this Order.~~

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum relating to the Site signed on _____, by the Director of the Office of Preparedness, Assessment and Emergency Response, EPA Region 8, or his delegate, and all attachments thereto. The Action Memorandum is attached as Appendix A and incorporated herein by reference.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

c. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Order as provided in Section XXXII.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. ~~"UDEQ" shall mean the Utah Department of Environmental Quality and any successor departments or agencies of the State.~~

f. "Future Response Costs" shall mean any and all costs, including, but not limited to, direct and indirect costs, that the United States incurs ~~in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order,~~ including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant with respect to Paragraph 23 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 33 (emergency response) and Paragraph 59 (work takeover) the Site on or after the Effective Date of this Order—, but excluding those Future Response Costs ~~shall also include all Interim Responses~~ that qualify as Oversight Costs, as provided below. no

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The

applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. ~~“Interim Response Costs” shall mean all costs, including direct and indirect costs, a) paid by the United States in connection with the Site between September 1, 2003 and the Effective Date, or b) incurred prior to the Effective Date, but paid after that date.~~

h. “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. “Order” shall mean this Administrative Order on Consent and all appendices attached hereto (listed in Section XXXI). In the event of conflict between this Order and any appendix, this Order shall control.

j. “Oversight Costs” shall mean all costs relating to the PacifiCorp Property, including direct costs and indirect costs and accrued Interest, incurred by the United States from September 1, 2003 until the date that EPA issues a Notice of Completion of Work as provided in Paragraph 69, that the United States may incur in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and any costs incurred pursuant to Paragraph 30 (emergency response) after the Effective Date of this Order. DO

k. “PacifiCorp Property” shall mean the real property located at 147 South 400 West in Salt Lake City, Salt Lake County, Utah, and described more fully in Appendix B attached hereto and incorporated herein. 7

l. “Paragraph” shall mean a portion of this Order identified by an Arabic numeral.

m. “Parties” shall mean EPA and Respondent.

n. “Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site PacifiCorp Property through August 31, 2003, plus Interest on all such costs through such date. 7

o. “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, et seq. (also known as the Resource Conservation and Recovery Act).

p. “Respondent” shall mean PacifiCorp, d/b/a Utah Power & Light.

q. “Section” shall mean a portion of this Order identified by a Roman numeral.

r. “Site” shall mean the Vermiculite Intermountain Superfund Site, located generally at 333400 West 100 South in Salt Lake City, Utah and depicted generally on the map

in the Action Memorandum, which is attached as Appendix AC. The Site, but is not limited to, includes the PacifiCorp Property.

s. "State" shall mean the State of Utah.

~~t. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the removal action, as set forth in Appendix B to this Order, and any modifications made thereto in accordance with this Order.~~ ✓

t. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

u. "Work" shall mean all activities relating to the PacifiCorp Property Respondent is required to perform under this Order. ?

v. "Work Plans" shall mean the Phase I Work Plan (relating to response activities within the control building located on the PacifiCorp Property), and the Phase II Work Plan (relating to removal of soils within the PacifiCorp Property), as set forth in Appendix D and Appendix E, respectively, to this Order, and any modifications made thereto in accordance with this Order. ✓

IV. EPA FINDINGS OF FACT

8. EPA hereby makes the following findings of fact for purposes of this Order:

a. The Site includes the ~~location~~location of the former Vermiculite Intermountain exfoliation facility (the "facility") and areas contaminated by asbestos emissions therefrom.

b. The facility, which operated between the early 1940s and 1984, exfoliated vermiculite concentrate from 1954 to 1984 from the Libby Vermiculite Mine, located in Libby, Montana. The Libby vermiculite concentrate contained amphibole asbestos, frequently above trace levels. EPA records show that the facility received at least 25,000 tons of vermiculite concentrate from the Libby Mine. ?

c. Historical records from the Libby Mine and data collected during investigations at the Libby Mine show that the handling and processing of Libby vermiculite during the exfoliation process were conducted at the Site.

~~12. EPA's Libby investigations have shown that disturbance of dust or soils containing the amphibole asbestos from Libby vermiculite produces high levels of respirable airborne asbestos fibers.~~ levels as high as 790 NO

~~13. EPA's investigations at the Libby Mine have shown that human exposure to the amphibole asbestos found in the Libby vermiculite concentrate causes asbestos-related diseases, including lung cancer, mesothelioma and asbestosis.~~ NO

d. From approximately 1911 to 1954, Respondent owned a portion of what is now the property PacifiCorp Property (the "1911-1954 Property"). In 1941, the Utah Lumber Company constructed a new warehouse on which the facility a portion of the 1911-1954 Property. This warehouse was occupied by Intermountain Insulation Company and may have operated from 1944 until 1954, leasing the property during that time to as a distribution facility. In 1954, Respondent sold the operator of the 1911-1954 Property to the Utah Lumber Company after which Vermiculite Intermountain constructed a new vermiculite exfoliation plant facility. Vermiculite Intermountain operated the exfoliation facility from about 1954 until about 1976 when it moved its operations back to the warehouse which was constructed in 1941 and continued operations there until 1984. During this time, emissions containing amphibole asbestos left the facility and contaminated surrounding properties, which are now part of the Site. In 1984, Respondent sold re-acquired the property in 1911-1954 Property from the then property owner (the Van Cott Bagley, Cornwall and reacquired it in McCarthy Profit Sharing Trust), including some additional property, that now constitutes the PacifiCorp Property.

e. EPA's sampling at the Site has found high levels of detected amphibole asbestos in soils, as well as in dust found in several buildings on the Site. A summary of the data reflecting these findings can be found in the Action Memorandum. As described more fully in the Action Memorandum, EPA has determined that certain response actions are necessary on/in: 1) within the former facility property; the Artistic Printing control building, the Ampee Parking Lot, the Utah Paper Box building and the Utah Power and Light Substation as well as surrounding soils, at the PacifiCorp Property.

V. EPA CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The ~~{insert name}~~ Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, is a "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. ~~Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site. (1) of CERCLA, 42 U.S.C. § 9607(a)(1).~~

i. ~~Respondent is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).~~

ii. ~~Respondent was the "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).~~

e. The conditions described in [Paragraphs ___ of] the Findings of ~~Fact~~ **Section IV** above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

10. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within ~~five~~**thirty** (530) days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least five (5) days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within ~~three~~**forty-five** (345) days of EPA's disapproval. ~~Respondent's contractor must demonstrate compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA.~~

11. Respondent hereby designates David Wilson of PacifiCorp as its Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order. Respondent's address is as follows:

David Wilson, P.E.
Safety & Environmental Dept.
PacifiCorp Power Delivery
825 NE Multnomah, Suite 1700 LCT

who has the authority

Portland OR 97232
Desk (503) 813-6635
Fax (503) 813-5088

18. ~~Within five (5) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within three (3) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.~~ ✓
If the Proj. Coord. performance is unacceptable
NO

12. EPA has designated Floyd Nichols of the Office of Preparedness, Assessment and Emergency Response, Region 8, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the OSC at U.S. EPA, EPR-ER, 999 18th Street, Suite 300, Denver, CO 80202. Delivery, except in emergency circumstances, shall be by U.S. mail.

13. EPA and Respondent shall have the right, ~~subject to Paragraph 11,~~ to change its respective designated OSC or Project Coordinator. Respondent shall notify EPA three (3) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice. EPA retains the right to disapprove of any new Project Coordinator designated by Respondent.

VIII. WORK TO BE PERFORMED

21. ~~Respondent shall perform, at a minimum, all actions necessary to implement the Statement of Work, which is attached and incorporated by reference as Appendix B to this Order.~~ ✓

22. ~~Work Plan and Implementation.~~

a. ~~Within ten (10) days after the Effective Date, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action described in the Statement of Work. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order. Respondent shall prepare a Quality Assurance Project Plan ("QAPP") as part of the Work Plan. The QAPP shall be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001), and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998).~~ ✓

b. ~~EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within five (5) days of receipt of EPA's notification of the required revisions.~~

Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order. ✓

14. Work Plans. Respondent shall perform, at a minimum, all actions necessary to implement the Work as set forth in the Work Plans, which EPA hereby approves. The Work Plans, including their attachments, are hereby incorporated into and is enforceable under this Order. Respondent shall not commence any Work except in conformance with the terms of this Order. Respondent shall not commence implementation of and the approved Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 15(b) Plans. ✓/mos

15. Health and Safety Plan. Within ^{two weeks prior to the date required for commencement of work as req. by the} ~~ten~~thirty (30) days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. Respondent may use a single Health and Safety Plan to address the Work described in both Work Plans. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action. ✓ work plan

16. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than three (3) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

17. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for ~~any necessary~~ post-removal site control, consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

that is to be determined by EPA

18. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every tenth day after the date of receipt of EPA's approval of the Work ~~Plan~~ Plans until termination of this Order, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit three (3) copies of all plans, reports or other submissions required by this Order, ~~or the Statement of Work, or any approved work plan~~ Plans. Upon request by EPA, Respondent shall submit such documents in electronic form.

c. Respondent shall, at least ~~(thirty)~~ 30 days prior to the conveyance of any interest in ~~real property at the Site~~ PacificCorp Property, give written notice to the transferee that the property is subject to this Order and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successors comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

19. Final Report. Within ~~thirty (30)~~ forty-five (45) days after completion of all Work required by this Order, Respondent shall submit for EPA review {and approval} a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

20. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

- i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
- ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 21(a) and 21(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § ~~300.440~~ 300.440, as applicable. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence. no

IX. SITE ACCESS

21. ~~If the Site, or any other property where access is needed to implement this Order, is owned or controlled by Respondent, such Respondent shall, commencing on the Effective Date, provide EPA, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property~~ PacifiCorp Property, for the purpose of conducting any activity related to this Order. as follows: ✓ w/moa

30. Where any action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within ten (10) days after the Effective Date, or as otherwise specified in writing by

a. EPA recognizes that the PacifiCorp Property includes an active, operating electrical substation that is an integral part of PacifiCorp's operations. EPA further recognizes that a number of critical health and safety policies, rules, regulations, and restrictions apply to the PacifiCorp Property in regards to the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts dangerous nature of electrical substation operations and for reasons entirely unrelated to any environmental conditions that may be present.

b. In the event EPA, the State, and any of their representatives, including contractors seek to have access to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with PacifiCorp Property for any reason, they shall provide PacifiCorp with reasonable advance notice. In no event will EPA, the State, or any of their representatives, including contractors, be permitted to enter the procedures in Section XV (Payment of Response Costs) PacifiCorp Property without:

i. completing PacifiCorp's Substation Awareness Training,

ii. wearing proper personal protective equipment (PPE), as described in PacifiCorp's Substation Entry Guidelines and PacifiCorp's Safety Orders, and

iii. one or more PacifiCorp substation journeyman being present.

c. EPA agrees to comply with all applicable health and safety policies,

rules, regulations, restrictions that apply to the PacifiCorp Property, whether founded upon federal, state, or local laws, rules, or regulations or upon Respondent's policies and procedures ("PacifiCorp Substation Entry Guidelines and/or PacifiCorp Safety Orders"). EPA further agrees to indemnify, defend, and hold Respondent harmless from and against any and all claims arising from or relating to any breach or violation of any PacifiCorp Substation Entry Guidelines and/or PacifiCorp Safety Orders by EPA, the State, and any of their representatives, including contractors. The applicable parts of the Substation Entry Guidelines and Safety Orders will be presented during the Awareness Training.

22. Where If Respondent is required to implement institutional controls on within the PacifiCorp Property that is owned by Respondent, Respondent shall execute and record in the Recorder's Office [or Registry of Deeds or other appropriate land records office] of Salt Lake County, State of Utah, an easement, running with the land, that (i) grants a right of access for the

purpose of conducting any activity related to this Order, subject to the limitations set forth in Paragraph 21, and (ii) grants the right to enforce the land use restrictions described in the Statement of Work attached as Appendix B to this Order Plans, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the response measures to be performed pursuant to this Order. Respondent shall ~~grant the access rights and the rights to enforce the land use restrictions to the State and its representatives and other appropriate grantees, as determined by EPA.~~ Respondent shall, within ~~fortyninety~~ (4090) days of the Effective Date time that EPA determines that Respondent will be required to implement such institutional controls, submit to EPA for review and approval with respect to such property:

a. A draft easement that is enforceable under the laws of the State of Utah ,

and

b. A current title insurance commitment or some other evidence of title reasonably acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances). Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder's Office ~~[or Registry of Deeds or other appropriate office]~~ of Salt Lake County. Within thirty (30) days of recording the easement, Respondent shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

32. ~~If the Site, or any other property where access or institutional controls are needed to implement this Order, is owned or controlled by persons other than Respondent, Respondent shall use best efforts to secure from such persons:~~

a. ~~an agreement to provide access thereto for Respondent, as well as for the EPA and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Order;~~

b. ~~an agreement, enforceable by Respondent and EPA to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response measures to be performed pursuant to this Order; and~~

c. ~~the execution and recordation in the Recorder's Office [or Registry of Deeds or other appropriate land records office] of Salt Lake County, State of Utah, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting~~

any activity related to this Order and (ii) grants the right to enforce the land use restrictions described in the Statement of Work which is attached as Appendix B to this Order, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the response measures to be performed pursuant to this Order. The access rights and/or rights to enforce land use restrictions shall be granted to the State and its representatives, Respondent and its representatives, and other appropriate grantees, as determined by EPA]. Within forty (40) days of the Effective Date of this Order, Respondent shall submit to EPA for review and approval with respect to such property:

d. — A draft easement that is enforceable under the laws of the State of Utah, and

e. — A current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Respondent is unable to obtain release or subordination of such prior liens or encumbrances)

f. — Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the easement shall be recorded with the Recorder's Office [or Registry of Deeds or other appropriate office] of Salt Lake County. Within thirty (30) days of the recording of the easement, Respondent shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

23. Notwithstanding any provision of this Order, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require land use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

24. Respondent shall provide to EPA and the State, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or that pertain to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

25. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA ~~and the State~~ under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), ~~and 40 C.F.R. § 2.203(b)~~. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA ~~and the State~~, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent. No

26. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent ~~asserts~~ asserts such a privilege in lieu of providing documents, it shall provide EPA ~~and the State~~ with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a brief description of the ~~contents~~ type of communication constituting the document, record, or information; and 6) a description of the nature of the privilege asserted by Respondent. ~~However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.~~ No

27. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

28. Until ~~10~~ five (5) years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall preserve and retain ~~all~~ non-identical copies of relevant records and documents ~~(including records or documents in electronic form)~~ now in its possession or control or which come into its possession or control that relate ~~in any manner~~ to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until ~~10~~ five (5) years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work. No

39. ~~At the conclusion of this document retention period, Respondent shall notify EPA and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or the State, Respondent shall deliver any such records or documents to EPA [or the State]. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA or the State with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or~~ No

information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

40. Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927. NO

XII. COMPLIANCE WITH OTHER LAWS

29. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

30. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site PacifiCorp Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer [insert Regional Office, e.g., Emergency Planning and Response Branch, EPA Region, telephone number, and the EPA Regional Emergency 24-hour telephone number] of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs). 7 800 424 8802 293-178

43. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at (303) 293-1788 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within five (5) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, NO

~~reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right To Know Act of 1986, 42 U.S.C. § 11004, et seq.~~

XIV. AUTHORITY OF ON-SCENE COORDINATOR

31. The OSC shall be responsible for overseeing Respondent's implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

45. ~~Payment for Past Response Costs.~~

a. ~~Within 30 days after the Effective Date, Respondent shall pay to EPA \$_____ for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT below and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name (Vermiculite Insulation), EPA Region 8 and Site/Spill ID Number 08-GA, and the EPA docket number for this action.~~

b. ~~Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:~~

ABA = 021030004

TREAS/NYC/CTR/

BNF=/AC 68011008

c. ~~At the time of payment, Respondent shall send notice that such payment has been made to:_____~~

Director, Financial Management Program, TMS-F

U.S. EPA, Region 8

999 18th Street, Suite 300

Denver, CO 80202

AND

Cost Recovery Program Manager, ENF-RC

Superfund Enforcement Program

U.S. EPA, Region 8

999 18th Street, Suite 300

Denver, CO 80202

d. ~~The total amount to be paid by Respondent pursuant to Paragraph 36(a) shall be deposited in the Vermiculite Insulation Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in~~

connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

32. Payments for ~~Future Response~~Oversight Costs.

a. Respondent shall pay EPA all ~~Future Response~~Oversight Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a Regionally prepared cost summary (currently known as a SCOPRIOS Summary) which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph ~~39~~33 of this Order. no

b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 08-GA. In the alternative, Respondent shall send the~~may make such payments by~~ wire transfer to: Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information: ✓

ABA = 021030004
TREAS/NYC/CTR/
BNF=/AC-68011008

c. At the time of payment, Respondent shall send notice that payment has been made to:

Director, Financial Management Program, TMS-F
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202

AND

and

Cost Recovery Program Manager, ENF-RC
Superfund Enforcement Program
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202

d. The total amount to be paid by Respondent pursuant to Paragraph ~~37~~32(a) shall be deposited in the Vermiculite Insulation Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

33. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for ~~Future Response~~Oversight Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue ~~on~~30 days after the Effective Date and shall continue to accrue until the date of payment. The Interest on ~~Future Response~~Oversight Costs shall begin to accrue ~~on~~30 days after the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII. no

34. Respondent may dispute all or part of a bill for ~~Future Response~~Oversight Costs submitted under this Order, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 3732 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 3732(c) above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within fifteen (15) days after the dispute is resolved. Notification of disputes regarding all or part of a bill for Future Response Costs shall be sent to: no

Cost Recovery Program Manager
EPA Region 8, ENF-T
999 18th Street, Suite 300
Denver, CO 80202

Respondent shall notify EPA's Cost Recovery Program Manager in writing of its objections within fifteen (15) days of receipt of the bill that it is disputing all or part of the bill for Oversight Costs. The Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and be sent certified U.S. mail, return receipt requested or by other mail delivery service with a delivery tracking and verification system. Thereafter, the provisions of Section XVI (Dispute Resolution) shall apply to the dispute. Kelcey

XVI. DISPUTE RESOLUTION

35. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally. Any disputes concerning activities or deliverables required under this Order for which dispute resolution has been expressly provided for, shall be resolved as provided in this Section. no

36. If Respondent objects to any EPA action taken pursuant to this Order, including billings for ~~Future Response~~Oversight Costs, it shall ~~may~~ notify EPA in writing of its no

objection(s) within ~~ten~~^{fifteen} (10¹⁵) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall ~~then~~ have ~~fifteen~~^{thirty} (15³⁰) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). ~~The Negotiation Period may be extended at the sole discretion of EPA.~~ Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order.

37. ~~Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order.~~ If the Parties are unable to reach an agreement ~~within~~ is not reached during the Negotiation Period, ~~and the Respondent may request a written determination by the Director, Superfund Preparedness, Assessment, and Emergency Response Program of the Office of Ecosystems Protection and Remediation, EPA management official at the Region VIE office director level or higher will issue a written.~~ The Director's determination is EPA's final decision on, which may be challenged in the dispute United States District Court for the District of Utah to Respondent the extent permitted by law. EPA's decision shall be incorporated into and become an enforceable part of this Order. Except as otherwise provided herein, Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

38. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the reasonable control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the Work or increased cost of performance.

39. If any event occurs ^{NO} or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondent shall notify EPA orally within ~~24~~⁴⁸ hours of when Respondent first knew that the event might cause a delay. Within three (3) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure event if it ~~intend~~^{intends} to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of force majeure for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

40. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Order that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

XVIII. STIPULATED PENALTIES

41. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 47 and 48 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Order or any ~~work plan~~ Work Plans or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, ~~or the Statement of Work and any plans~~ Plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

42. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with terms of this Order, ~~or the Statement of Work and any EPA approved work plans~~ Plans, but specifically excluding delinquency in the provision of progress reports:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$5,000 <u>250</u> 2500	1st through 14th day
\$10,000 <u>500</u> 5000	15th through 30th day
\$32,500 <u>1000</u>	31st through 45th day <u>46th day and beyond</u> <i>no</i>
<u>\$2000</u>	

43. Stipulated Penalty Amounts - Progress Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate progress reports pursuant to this Order:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$500 <u>250</u>	15th through 30th day
<u>\$500</u>	31st through 45th day <u>46th day and beyond</u> <i>700/month</i>
\$1,000	

58. ~~In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 59 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of \$1,500,000.~~ *2* *no*

44. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a ~~deficient~~ submission under Section VIII (Work to be Performed) that EPA determines to be deficient, during the period, if any, beginning on the ~~31st~~ day after EPA's receipt of such submission until thirty (30) days after the date ~~that upon~~ which EPA notifies Respondent of ~~any such~~ deficiency; and 2) with respect to a decision by the EPA Management Official at the office director level or higher, under Paragraph ~~4237~~ of Section XVI, (Dispute Resolution), during the period, if any, beginning on the ~~21st~~ day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order. no

45. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

46. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by wire transfer sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS/NYC/CTR/
BNF=/AC-68011008

and shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 08-GA, the EPA Docket Number _____, and the name and address of Respondent. Copies of wire transfer paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 12, and to Kelcey Land, Cost Recovery Manager, ENF-RC, 999 18th Street, Suite 300, Denver, CO.

47. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.

~~63. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.~~ no

48. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph ~~52.46~~. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's

violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order ~~or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 59.~~ Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIX. COVENANT NOT TO SUE BY EPA

49. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), ~~for arising from or related to the performance of the Work and for recovery of or to Past Response Costs and Oversight Costs, or~~ Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XV of this Order and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Order. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order, including, but not limited to, payment of ~~Future Response~~ Oversight Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person. No

XX. RESERVATIONS OF RIGHTS BY EPA

50. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

51. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Order;

b. liability for costs not included within the ~~definition[s]~~ definitions of Past Response Costs, Oversight Costs, or Future Response Costs; No

- e. ~~liability for performance of response action other than the Work;~~ NO
- c. criminal liability;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- f. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site PacifiCorp Property. ?

~~68. Work Takeover. In the event EPA determines that Respondents has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.~~ NO

XXI. COVENANT NOT TO SUE BY RESPONDENT

52. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Oversight Costs, Future Response Costs, or this Order, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the ~~[State]~~ Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site PacifiCorp Property. ?

53. ~~Except as provided in Paragraph 62 (Waiver of Claims), these~~ These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs ~~58~~ 51 (b), (e), and (ed) ~~-through (gf)~~, but

only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

54. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

55. Respondent agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the SitePacifiCorp Property, including for contribution, against any person that has entered into a final de minimis settlement under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), with EPA with respect to the SitePacifiCorp Property as of the Effective Date. [This waiver shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts a claim or cause of action relating to the SitePacifiCorp Property against such Respondent.]

XXII. OTHER CLAIMS

56. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

57. Except as expressly provided in Section XXI, Paragraph 63~~57~~ (De Minimis [and De Minimis] Waivers) and Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

58. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h) or otherwise permitted by law. NO

XXIII. CONTRIBUTION PROTECTION

59. The Parties agree that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work all response costs incurred or to be incurred by the United States or any other authorized person, Past Response Costs, and Future Response Costs any and all response actions taken or to be taken at the Site, except that "matters addressed" specifically excludes EPA's rights set forth in Section XX (Reservations of Rights by EPA). NO
Except as provided in Section XXI, Paragraph 63~~57~~ of this Order (De Minimis [and De Minimis] Waivers), nothing in this Order precludes the United States or Respondent from asserting any claims, causes of action, or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

60. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

61. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

~~78. Respondent waives all claims against the United States for damages or reimbursement or for set off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.~~ NO

XXV. INSURANCE

62. At least seven (7) days prior to commencing any on-Site work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. Respondent may satisfy its obligations under this Paragraph by providing such insurance through one or more contractors. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor. NO

XXVI. FINANCIAL ASSURANCE

63. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security in the amount of \$1,500,000 500,000 in one or more of the following forms:

crafts
panel

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Respondent; or
- e. A demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

64. If Respondent seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph ~~7263~~(a) of this Section, Respondent shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Respondent seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph ~~7263~~(d) or (e) of this Section, it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) ~~annually, on the anniversary of the Effective Date~~ as requested by EPA. In the event that EPA reasonably determines at any time that the form of financial assurances provided pursuant to this Section are inadequate does not satisfy the requirements of the applicable laws, rules, or regulations, Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph ~~7263~~ of this Section. Respondent's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Order.

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65. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 72 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Respondent may reduce the amount of the security in accordance with the written decision resolving the dispute.

66. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVII. MODIFICATIONS

67. The OSC may make modifications to any plan or schedule or Statement of Work. Any requirements of the Order may be modified in writing by mutual agreement of the parties. Modifications to the EPA-approved Work Plans may only be made in writing or by the EPA OSC. Modifications to any plan or schedule other than the approved Work Plans may be made in writing by the OSC or at the OSC's oral direction. Any, provided that the oral modification will be memorialized in writing by EPA promptly, but is memorialized in writing within ten (10) days. If the OSC makes an oral modification at Respondent's request, it shall have as its be memorialized in writing by the Respondent within ten (10) days; provided, however, that the effective date the date of the OSC's oral direction. Any other requirements the modification shall be the date of this Order may be modified in writing by mutual agreement of the parties. the OSC's oral direction. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to this Paragraph.

shall be formally approved oral or written

85. If Respondent seeks permission to deviate from any approved work plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 76.

68. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXVIII. ADDITIONAL REMOVAL ACTION

87. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Order. Upon EPA's approval of the plan pursuant to Section VIII, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (Modifications).

will offer will answer

no

XXVIII. NOTICE OF COMPLETION OF WORK

69. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will

notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work ~~Plan~~Plans if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work ~~Plan~~Plans and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work ~~Plan~~Plans shall be a violation of this Order. ✓

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

70. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

71. This Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order.

XXX. EFFECTIVE DATE

72. This Order shall be effective ten (10) days after the Order is signed by EPA. *Craig Paul*

The undersigned representative(s) of Respondent certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Order and to bind the party(ies) it (they) represent(s) to this document.

Agreed this _____ day of March, 2004. *April*

For Respondent _____

By _____
Title _____

It is so ORDERED and Agreed this _____ day of March, 2004.

BY: _____ DATE: _____
Doug Skie, Director
Preparedness, Assessment and
Emergency Response Branch
Region 8
U.S. Environmental Protection Agency

BY: _____ DATE: _____
Michael Risner, Director

Legal Enforcement Program
Region 8
U.S. Environmental Protection Agency

BY: _____ DATE: _____
Sharon Kercher, Director
Technical Enforcement Program
Region 8
U.S. Environmental Protection Agency

EFFECTIVE DATE: _____